IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 676 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IB MALIK

Versus

TOURISM CORPORATION OF GUJ. LTD

Appearance:

1. Special Civil Application No. 676 of 2002

MR YH VYAS for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/09/2002

ORAL JUDGEMENT

Rule. Ms Vishan for M/s. Trivedi & Gupta waives service of rule for the respondents.

2. The petitioner is a driver, employed by the Tourism Corporation of Gujarat Ltd.. On the ground that the petitioner was remaining absent without obtaining prior permission, the petitioner was served with a chargesheet dated 9-12-1998 and the departmental inquiry was accordingly commenced against the petitioner. At the conclusion of the departmental inquiry, the disciplinary authority i.e. the Managing Director of the Corporation held that the Inquiry Officer held that charge No.1 was partly proved and charge No.1 was not proved and copy of the inquiry report was served upon the petitioner and after considering his reply dated 29-12-1999, the disciplinary authority imposed the penalty of stoppage of three increments without future effect. The disciplinary authority by the said order dated 29-04-2000 also directed that the period of suspension between 16-7-1998 and 29-4-2000 should be treated as suspension.

Aggrieved by the said order, the petitioner preferred an appeal before the appellate authority and the appellate authority reduced the penalty from stoppage of three increments without future effect to stoppage of one increment without future effect. The order treating the period of suspension as suspension is, however, not disturbed.

3. The petitioner has in the present petition challenged the aforesaid order treating the period of suspension as suspension and has also prayed for payment of subsistence allowance at the rate of 75% for the period after expiry of six months from the date of suspension as per the rules.

4. Affidavit-in-reply is filed on behalf of the respondent-Corporation opposing the petition.

5. At the hearing of the petition, both the learned counsel for the parties have stated that the petitioner has already been paid subsistence allowance at the rate of 75% for the period after completion of six months from the date of suspension. The only controversy is, therefore, about the order treating the period of suspension as suspension.

6. The learned counsel for the petitioner submits that when the misconduct proved against the petitioner was so minor as to warrant penalty of one increment without future effect, the order treating the entire period of suspension as suspension would cause serious loss to the petitioner for the entire career and,

therefore, such an order was not warranted.

7. On the other hand, Ms Vishan learned counsel for the respondent-Corporation submits that it is only if the employee is fully exonerated or in the case of suspension where it was wholly unjustified that the employee is required to be given full pay and allowances which he would have got but for suspension and that it is only in such an event that the entire period is required to be treated as the period spent on duty.

8. In rejoinder, Mr Vyas for the petitioner submits that the petitioner is prepared to forego his claim for the balance amount of salary i.e. the difference between full salary and the subsistence allowance already paid to the petitioner but there is no justification for treating the period of suspension as suspension and for not treating it as the period spent on duty.

9. Having heard the learned counsel for the parties, it appears to the Court that the respondents have proceeded on misconception of Rule 15, the relevant portion of the rule, reads as under:-

15. PAY AND ALLOWANCE ON REINSTATEMENT :

(i) When an employee who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement should consider and make a specific order:-

(a) regarding the pay and allowance to be paid to the employee for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty.

(ii) An employee who is fully exonerated or in the case of suspension where it was wholly unjustified, he shall be given the full pay and allowances to which he would have been entitled had he not been suspended .....

(iii) In other cases, the employee may be given such pay and dearness allowances as the competent authority may prescribe and who

may also specifically direct whether the period of absence from duty shall be treated as period spent on duty or not for any specified purpose.

10. When an employee who has been suspended and reinstated, the competent authority is required to consider and make a specific order whether he is to be paid the pay and allowances for the period of absence from duty and whether or not the said period shall be treated as period spent on duty. If the employee is fully exonerated, the employee shall be given full pay and allowances which he would have got but for the order of suspension. So also, in the case of suspension where it was wholly unjustified the employee is to be given the full pay and allowances which he would have got but for the order of suspension. Hence if the charge is partly proved against the employee, the employer may decline to grant full pay and allowances for the period of suspension. This is to be considered under sub-rule (i)(a) of Rule 15 which is concerned with the pay and allowances to be paid to the employee for the period of absence from duty but the order to be passed under clause (b) of sub-rule (i) is not necessarily concerned with the monetary benefits to be paid to the employee for the period of suspension. Under the said clause (b), the employer is required to consider whether or not the period of absence from duty shall be treated as the period spent on duty. For this purpose, it is open to the competent authority to pass an order that the period of suspension/period of absence may be treated as period spent on duty but at the same time denying the full pay and allowances to the employee if the employee is not fully exonerated in the inquiry.

11. Having regard to the facts and circumstances of the case, when the only charge which was partly proved was absence of duty for 16 days without obtaining prior permission and the appellate authority of the Corporation itself found that that proper penalty to be imposed on the petitioner was stoppage of one increment without future effect, even while denying the petitioner the full pay and allowances for the period of suspension i.e. full pay minus 75% subsistence allowance already paid to the petitioner, the authority was required to consider whether the period of absence from duty shall be treated as the period spent on duty. In fact, when worked out, the direction for treating the period of suspension as suspension would result into greater loss to the petitioner than the loss resulting from stoppage of one increment without future effect.

12. Looking to the adverse consequences to which the petitioner would be exposed if the period of suspension is treated as suspension by denial of increments and its effect on computation of pensionable service, gratuity and all other future service benefits, the respondent-authorities are required to re-consider the matter in light of the aforesaid interpretation of the provisions of Rule 15 of the service rules of the Corporation. In fact the disciplinary authority did not give any hearing to the petitioner before deciding to treat the period of suspension as suspension.

13. In view of the above discussion, it is apparent that the direction contained in the impugned order at Annexure "A" and "B" treating the period of suspension as suspension, is illegal and is required to be quashed and set aside. The disciplinary authority is required to re-consider the matter after giving the petitioner an opportunity of being heard.

14. In view of the above discussion, the petition is allowed. The impugned orders dated 29-4-2000 (Annexure A) and 27-2-2001 (Annexure B), in so far as they treat the period of suspension as suspension, are quashed and set aside and the disciplinary authority shall re-consider the matter after giving the petitioner an opportunity of being heard and in light of the observations made in this judgment, within two months from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute.
Direct service is permitted.

(M.S. Shah,J)
zgs/-